

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

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|--------------------------|---|---------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | CRIMINAL ACTION NO. |
| |) | 2:07cr222-MHT |
| ANTONIO T. MCDADE |) | (WO) |

OPINION AND ORDER

This case is before the court on defendant Antonio T. McDade's motion to continue. For the reasons set forth below, the court finds that jury selection and trial, now set for July 20, 2009, should be continued pursuant to 18 U.S.C. § 3161(h)(7).

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court shall consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation,

taking into account the exercise of due diligence."

§ 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and McDade in a speedy trial. McDade's counsel has indicated that he requires additional time to identify and locate potential witnesses who surfaced in a recently produced lengthy videotape. In addition, McDade's counsel needs additional time to investigate potential impeachment evidence concerning the victim in the case, who has yet to be located despite diligent efforts by counsel.

Accordingly, it is ORDERED as follows:

(1) Defendant Antonio T. McDade's motion for a continuance (Doc. No. 113) is granted.

(2) The jury selection and trial for defendant McDade, now set for July 20, 2009, are reset for August 10, 2009, at 10:00 a.m., in Courtroom 2FMJ of

the Frank M. Johnson Jr. United States Courthouse
Complex, One Church Street, Montgomery, Alabama.

DONE, this the 14th day of July, 2009.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE